

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Nancy D. Morrow

Case Number: 02-05447

Name of the Respondents

First Union Brokerage Services, Inc.  
k/n/a Wachovia Securities, Inc., and  
Cynthia L. Wadkinson

Hearing Site: Charlotte, North Carolina

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**REPRESENTATION OF PARTIES**

Claimant Nancy D. Morrow, hereinafter referred to as ("Claimant"), was represented by Scott Tippet, Esq., House & Tippet, PLLC, Winston-Salem, North Carolina.

Respondent First Union Securities, Inc. ("First Union") k/n/a Wachovia Securities, Inc., was represented by Andrew Park, Esq., Wachovia Securities, Inc., Richmond, Virginia.

Respondent Cynthia Wadkinson ("Wadkinson") was initially *pro se*. At the hearing, Respondent Wadkinson was represented by Andrew Park, Esq., Wachovia Securities, Inc., Richmond, Virginia.

**CASE INFORMATION**

Statement of Claim filed on September 13, 2002.

Claimant signed the Uniform Submission Agreement on June 21, 2002.

Statement of Answer filed by Respondent Wadkinson on November 18, 2002.

Respondent Wadkinson signed the Uniform Submission Agreement on November 11, 2002.

Statement of Answer filed by Respondent First Union on December 18, 2002.

A representative of Respondent First Union signed the Uniform Submission Agreement on December 9, 2002.

**CASE SUMMARY**

Claimant asserted the following cause of action, among others: failure to execute sell orders. The cause of action relates to the following securities: AIM Equity mutual fund, Fidelity Advisor mutual fund, AIM Income mutual fund, and Boston Communications common stock.

Unless specifically admitted in its Answer, Respondent First Union denied the allegations made in the Statement of Claim and asserted the following defenses: Statement of Claim fails to state a claim upon which relief can be granted; applicable statute of limitations bar the claims in whole

or in part; doctrines of waiver, estoppel, and ratification bar any recovery; claimant failed to mitigate damages; no breach of fiduciary duty; doctrine of assumption of risk; contractual nature of relationship between Claimant and Respondent First Union bars tort claims for economic losses as a matter of law; Claimant cannot prove proximate causal link between the alleged breach of duty and damages; and, Respondent First Union followed standard industry, exchange, and governmental procedures in discharging its responsibilities to Claimant.

Unless specifically admitted in her Answer, Respondent Wadkinson denied the allegations made in the Statement of Claim and asserted the following defenses: doctrine of contributory negligence, and, no breach of fiduciary duty.

### **RELIEF REQUESTED**

Claimants in her Statement of Claim requested:

Compensatory Damages	\$ 15,278.00
Punitive Damages	\$ 10,000.00
Attorneys' Fees	Unspecified
Costs	Unspecified

Respondent First Union in its Statement of Answer requested the arbitrator dismiss the Statement of Claim and award Respondent First Unions' costs and attorney's fees; and award any other relief that is just.

Respondent Wadkinson in her Statement of Answer requested this matter be expunged from her Central Registration Depository System ("CRD") record.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Wadkinson orally motioned to amend her Statement of Answer at the hearing to request expungement of this claim from her CRD record. The Arbitrator granted her motion to amend.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent First Union and Respondent Wadkinson are jointly and severally liable to and shall pay to Claimant compensatory damages of \$3,235.00 (inclusive of pre-judgment interest);

2. Respondent First Union and Respondent Wadkinson are jointly and severally liable to and shall pay to Claimant \$150.00 reimbursement of filing fee;
3. The Arbitrator denied Respondent Wadkinsons' request for expungement;
4. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,
5. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 150.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent First Union is a party.

Member surcharge	= \$ 600.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,000.00
Total Member Fees	= \$ 2,350.00

#### **Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$ 450.00	= \$ 450.00
Pre-hearing conference: May 15, 2003 1 session	
Two (2) Hearing sessions with a single arbitrator @ \$ 450.00	= \$ 900.00
Hearing Date/s: June 26, 2003 2 sessions	
Total Forum Fees	= \$ 1,350.00

1. The Arbitrator has assessed \$450.00 of the forum fee to Respondent First Union;

2. The Arbitrator has assessed \$450.00 of the forum fee to Respondent Wadkinson; and,
3. The Arbitrator has assessed \$450.00 of the forum fee to Claimant Morrow.

**FEE SUMMARY**

1. Claimant is assessed the following fees:

Initial Filing Fee	= \$	150.00
Forum Fee	= \$	450.00
Total Fees	= \$	600.00
Less payments	= \$	600.00
Balance Due to NASD Dispute Resolution	= \$	0.00

2. Respondent First Union is assessed the following fees:

Member Fees	= \$	2,350.00
Forum Fee	= \$	450.00
Total Fees	= \$	2,800.00
Less payments	= \$	425.00
Balance Due NASD Dispute Resolution	= \$	2,375.00

3. Respondent Wadkinson is assessed the following fee:

Forum Fee	= \$	450.00
Total Fees	= \$	450.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	450.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

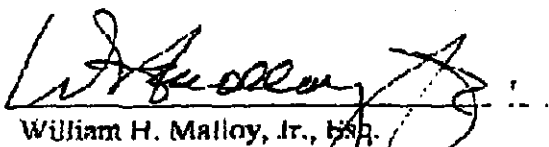
**ARBITRATION PANEL**

William H. Malloy, Jr., Esq.

- - Public Arbitrator, Presiding Panelist

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**Arbitrator's Signature**

  
William H. Malloy, Jr., Esq.  
Public Arbitrator, Presiding Panelist

July 31, 2003  
Signature Date

August 1, 2003  
Date of Service (For NASD Dispute Resolution office use only)